U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

SEP - 9 2004

The Honorable Ellen Engleman Conners
Chairman
National Transportation Safety Board
Washington, DC 20594

Dear Chairman Engleman Conners:

This letter addresses the National Transportation Safety Board's Safety Recommendations I-02-1 and I-02-2:

I-02-1

Develop, with the assistance of the Environmental Protection Agency and Occupational Safety and Health Administration, safety requirements that apply to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements.

I-02-2

Implement, after adoption of safety requirements developed in response to Safety Recommendation I-02-1, an oversight program to ensure compliance with these requirements.

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) include requirements for loading and unloading railroad tank cars, highway cargo tanks, and other bulk containers and for training persons who perform loading and unloading operations subject to HMR requirements. For example, Part 174 of the HMR, which applies to the transportation of hazardous materials by rail, includes general loading and unloading requirements for hazardous materials and specific loading and handling requirements for shipments of Class 1 (explosive), Class 2 (gases), Class 3 (flammable), Division 6.1 (poisonous), and Class 7 (radioactive) materials. Similarly, Part 177 of the HMR , which applies to the transportation of hazardous materials by motor carrier, includes general hazardous materials loading and unloading requirements and specific loading and unloading requirements applicable to Class 1, Class 2, Class 3, Class 4 (flammable solid), Class 5 (oxidizing), Class 8 (corrosive), Division 6.1 and 2.3 (poisonous), and Class 7 materials.

In addition, the HMR include requirements for the inspection and maintenance of cargo transfer equipment, such as piping and transfer hoses, that is part of a bulk packaging or carried on a vehicle used to transport a bulk packaging. The HMR also include emergency shutdown measures for unloading operations to which the HMR apply. For example, the HMR include comprehensive regulatory requirements applicable to the unloading of cargo tank motor vehicles used to transport liquefied compressed gases. In conformance with these requirements, operators of cargo tank motor vehicles (CTMVs) used to transport liquefied compressed gases must, on a monthly basis, visually inspect each CTMV's discharge system and must replace or repair damaged components before placing the CTMV back in service. Further, each cargo tank used to transport liquefied compressed gases must be equipped with an emergency discharge control system that activates automatically or can be activated by remote control in the event of an unloading emergency. Each CTMV that is required to be equipped with an emergency discharge control system must carry on the vehicle written emergency discharge control procedures for all delivery operations. (See §§ 173.315, 177.840, and 180.416 of the HMR.)

Within the Department of Transportation each of the modal administrations and the Research & Special Programs Administration (RSPA) have enforcement programs which conduct random inspections to insure compliance with the HMR. RSPA inspectors are trained in a classroom environment and through up to one year of on-the-job training with an experienced inspector. During calendar year 2003 RSPA inspectors conducted 1,860 compliance inspections. Each inspection includes a thorough examination of security, operating and safety procedures, documentation, and training required by the HMR. Discrepancies are remedied through a system of warning letters, tickets for noncompliance, civil penalty actions, and when necessary, criminal prosecution. The Occupational, Safety and Health Administration and the Environmental Protection Agency have similar active inspection programs.

The Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) have regulatory authority for cargo transfer equipment that is owned by and located at a fixed facility. The EPA and OSHA regulations establish loading and unloading procedures and requirements for equipment inspection and maintenance, fire suppression, emergency shutdown, and emergency response planning. The HMR do not prescribe inspection or maintenance requirements for equipment at a fixed facility that is used to unload bulk packages such as rail tank cars or CTMVs. The HMR do reference OSHA and EPA standards as applicable, however. For example, for hazardous materials transported in certain portable tanks, the HMR establish requirements for unloading the portable tank without removal from a transport vehicle (see § 177.834(o)). The facility at which the portable tank is to be unloaded must comply with the fire suppression, emergency shutdown, and emergency response planning requirements in standards issued by OSHA and EPA at 29 CFR 1910 and 40 CFR 68.

We work closely with both OSHA and EPA on hazardous materials issues. For example, in 1999 we wrote to OSHA to suggest adoption of a maintenance and repair standard for cargo tanks transfer hoses and a regulation to require facilities at which liquefied compressed gases are unloaded to install emergency discharge control systems that would shut down unloading operations automatically in the event of a catastrophic hose failure. We recently completed a

rulemaking (HM-223) to clarify the applicability of the HMR to specific functions and activities, including loading and unloading operations. We consulted extensively with OSHA and EPA throughout the rulemaking process. The final rule published under HM-223 (October 30, 2003; 68 FR 61905) includes lengthy preamble discussions of the OSHA and EPA regulatory requirements applicable to hazardous materials facilities and guidance as to the relationship of the HMR to OSHA's worker protection standards and EPA's environmental protection regulations. Since many loading and unloading activities are actually part of manufacturing processes at fixed facilities, OSHA regulations include a number of requirements governing such activities. OSHA regulations cover operational procedures for loading and unloading activities and requirements for facility equipment used for such loading and unloading operations. Similarly, EPA requirements for environmental protection that relate to loading or unloading operations – such as requirements for secondary containment or vapor recovery – may also apply.

By clarifying the hazardous materials regulatory responsibilities among RSPA, EPA, and OSHA, the HM-223 final rule should enhance hazardous materials transportation safety, reduce risks to the environment from hazardous materials, and promote workplace safety at facilities that manufacture or handle hazardous materials. We will continue to work closely with EPA and OSHA to enhance the safety of hazardous materials at fixed facilities and, as necessary and appropriate, to recommend specific measures to achieve this goal. In light of the extensive regulations governing hazardous materials loading and unloading operations and RSPA's ongoing coordination with both EPA and OSHA on these issues, we request that you classify recommendations I-02-1 and I-02-2 as "Closed – Acceptable Alternative Action. We thank you for consideration of our request.

If you have any questions, please contact me or James Wiggins, Director, Office of Policy and Program Support, at (202) 366-4831.

Sincerely yours,

Samuel G. Bonasso
Deputy Administrator